WP(C) 3149/2007

BEFORE

HON'BLE MR JUSTICE AMITAVA ROY

The petitioner is before this Court with the grievance that he had been illegally and wrongfully prevented from submitting his tender to contest for the settlement of Kumarikata hat(hereafter referred to as the 'Market') in terms of the NIT issued by the Block Development Officer, Tamulpur Development Block and approved by the Bodoland Territorial Council on 1.6.2007 fixing 15.6.2007 for the receipt of tenders in response thereto.

This Court while issuing notice on 25.6.2007 , in the interim, restrained the further progress of the process.

I have heard Mr J.Sarmah, learned counsel for the petitioner. Mr K. Das, learned Standing counsel, Bodoland Territorial Council(hereafter referred to as the 'Council') and Mr SK Medhi, learned counsel for the respondent No.5.

The petitioner's case in brief is that, being eligible in terms of the stipulations contained in the NIT , he sought to submit his tender on the date mentioned hereinabove and arrived at the office of the BTC Secretariat , Kokrajhar. However, he was prevented from doing so by a group of unidentified youths armed with deadly weapons. Being unable to submit his tender , he approached the local police at Kokrajhar, but no heed was paid to his grievance. Being apprehensive, the petitioner left Kokrajhar and eventually on 18.6.2007 lodged an FIR with the Kumarikata police station. He also submitted a complaint before the Principal Secretary of the Council ventilating his grievance, but to not avail.

The respondent Nos 2,3 and 4 representing the Council in their affidavit while denying the alleged incident, have asserted that to obviate the possibility of any untoward incident, security was provided at the BTC Secretariat by detailing section of armed force to ensure peace and tranquility . This was maintained w.e.f. 11.6.2007 to 20.6.2007 as the tenders for other markets as well, were expected to be submitted in between. The answering respondents have stated that no written or verbal complaint was also lodged with the BTC or with the local police relating to the alleged
incident. They dismissed the newspaper reports relating to the alleged incident as false, fabricated and baseless published for extraneous considerations and illegal gain.

Mr Sarmah has urged that the petitioner having been denied his lawful right to participate in a public process by show of force, the exercise undertaken by the BTC vis a vis the market involved is patently illegal and unconstitutional and is liable to be adjudged as such. The learned counsel has further submitted that the petitioner's offer being competitive in nature , he ought to be afforded an opportunity to submit his tender.

Mr Das, in reply has contended that there being no basis to conclude that the petitioner was forcefully prevented from submitting his tender, this Court in exercise of its writ jurisdiction would not intervene.

Mr Medhi while endorsing the stand taken on behalf of the Council has submitted that the respondent No.5 having submitted his tender with the expectation of getting the settlement , the stalemate in the process has caused serious prejudice and in absence of any factual basis in law justifying the challenge , the petition ought to be dismissed outright.

The rival arguments have been duly considered. In view of the conflicting pleadings apropos the incident , this Court in exercise of its writ jurisdiction is not equipped to discern correctly the facts . The Council as noted hereinabove has categorically denied o any such incident. Further, it has asserted that the BTC Secretariat where the tenders were supposed to be deposited was under the constant vigil of a section of armed force and that no complaint whatsoever had been submitted to it even remotely referring to the incident alleged. Incidentally, the last date of submission of tenders was 15.6.2007, but the petitioner being fully aware thereof, lodged the FIR relating to the incident on 18.6.2007 with the Kumarikata police station. It is really intriguing as to why a tenderer if so desperately willing to submit his tender and prevent

ed from doing so, would not be prompt enough to seek redress and instead delay the necessary steps as has been done in the instant case.

On a consideration of all above, I am of the opinion that this is not a fit case where the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India ought to be exercised.

On a query made by this Court, the learned Standing counsel for the Council has conveyed the mind of the said respondent to continue with the on going settlement process which has since been stalled by this Court.

In view of the determination as above, the petition fails and is dismissed. The interim order stands vacated. No costs.